

1 Ted O. Lympus, District Judge  
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7 IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF  
8 THE STATE OF MONTANA, IN AND FOR THE COUNTY OF FLATHEAD

9 \* \* \* \* \*  
10 IN THE MATTER OF ) Cause No. DV-08-182(A)  
11 )  
12 MARTIN BOWER, ) ORDER AND RATIONALE ON  
13 ) PETITION FOR JUDICIAL  
14 ) REVIEW  
15 )  
16 \* \* \* \* \*

17 This matter is before the Court on the Petition for  
18 Judicial Review filed by Martin Bower from a final agency  
19 decision issued by the Commissioner of Securities and Insurance.  
20 Petitioner filed his brief on judicial review, the agency filed  
21 its response, no further briefing was submitted and the Court,  
22 having considered the petition, legal memoranda and  
23 administrative record, now enters the following:

24 ORDER

25 The Petition for Judicial Review is Dismissed for lack of  
26 subject matter jurisdiction, as Petitioner failed to exhaust his  
27 administrative remedies. Section 2-4-702(1)(a), M.C.A.

28 RATIONALE

The Court notes that statutorily, one appealing from a  
final decision of an administrative agency must first exhaust  
one's administrative remedies. Section 2-4-702(1)(a), M.C.A.  
In the case at bar, following submission of the Hearing  
Officer's proposed decision, Petitioner was given the  
opportunity to file written exceptions to the decision. He

1 failed to do so, despite having legal representation at all  
2 pertinent times.

3       Thereafter, the Commissioner of Securities and Insurance  
4 issued the final agency decision, namely, that Petitioner  
5 committed securities fraud by selling or attempting to sell to  
6 certain elders purported investment products. Clearly,  
7 Petitioner failed to exhaust his administrative remedies, and  
8 the Court therefore has no jurisdiction to consider Petitioner's  
9 attempts to appeal the final agency order.

10       Furthermore, a review of the record establishes that the  
11 Hearing Officer relied upon substantial evidence in finding that  
12 Petitioner violated securities and insurance law.

13       Dated this 27th day of January, 2009.

14   
15 Ted O. Lympus, District Judge

16  
17 c: William L. Managhan, Esq.  
18 Roberta Cross Guns, Esq.  
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